

ENVIRONMENTAL PROTECTION COMMISSION  
MINUTES  
GENERAL MEETING  
NOVEMBER 5, 2003

The meeting was called to order at 7:30 p.m. in Room 119 of the Darien Town Hall.

Commission Members Present: Peter Hillman, Susan Cameron, Reese Hutchison and Nina Miller

Staff Present: Nancy Sarner

Chairman Hillman announced that the Public Hearing for Amendment of EPC-83-2001, Darien Sewer Commission, Long Neck Point & Pear Tree Point Road had been postponed because the mailings to neighbors had not been completed, and that the applicant for the first agenda item, EPC-90-2003, Belinda Brooks Metzger, 36 Ox Ridge Lane had requested a postponement. Ms. Metzger had filed a letter of extension to open the application to the Environmental Protection Commission. Both agenda items will be rescheduled for the December 3, 2003.

New Business:

Chairman Hillman read the following agenda item:

EPC-99-2003, Ruben D. Kearney, 29 Maple Street, proposing the replacement of a pre-existing 8'x12' deck with a 14'x18' deck and perform related site development activities within a regulated area. The property is located on the north side of Maple Street approximately 1,000 feet west of the intersection of Noroton Avenue and Maple Street, shown on Tax Assessor's Map #44 as Lot #48.

Ruben Kearney, property owner, presented the application to the Commission. He explained that the deck replacement work had started before he was informed by the Building Department that he needed to file for permit approval. He said that he would use the same footings and construct the deck from a synthetic decking material, Ovec.

During their discussion, the EPC found that, although at some point, the deck had been enlarged by a previous owner from 8'x12' to 14'x18' without proper approvals, the larger deck does not pose an adverse impact on the channelized stream. The Commission also found that Mr. Kearney had no fault in the discrepancy.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve as submitted the reconstruction of a 14'x18' deck within regulated areas. The work activity shall conform to the property map submitted with the application showing the deck shall be located no closer than 9'6" from the stream. The motion was made by Ms. Miller, seconded by Mr. Hillman, and unanimously approved.

Chairman Hillman read the following agenda item:

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EPC-100-2003, Dennis & Jean Gillespie, 6 Juniper Road, proposing the installation of a sewer line to connect to town sewer, fill and regrading activity associated with residential improvements, and perform related site development activities within a regulated area. The property is located on the south side of Juniper Road approximately 500 feet east of the intersection of Juniper Road and Nearwater Lane, shown on Tax Assessor's Map #55 as Lot #16.

Don Strait of Grumman Engineering presented the application to the Commission. Mr. Strait reviewed the proposed plan. He said that the existing septic system in the front yard would be abandoned. The new sewer line would connect to the previously approved sewer line [#EPC-3-1999] on the Morrison property at 8 Juniper Road. The line would be constructed of a 1 ½-inch plastic pipe with pump chamber down line toward Morrison. The limit of disturbance is proposed as 25 feet from the wetlands boundary, and silt fence would be installed, avoiding trees on the Morrison property, prior to commencement of work activity.

Mr. Hillman asked Mr. Strait what work would be located outside the 50-foot buffer. Mr. Strait replied that the additions and deck shown on the plans are not within the regulated area, but that the fill and regrading associated with the construction would be within the 50-foot setback. Ms. Miller inquired about the need for the fill. Mr. Strait replied that the fill is required to support the walkway and wall around the back of the house. He said that the owners originally considered more work within the regulated areas but had scaled back the scope of their project. Ms. Cameron asked if blasting would be required because of the ledge. Mr. Strait replied that no blasting is needed because they could work around the ledge. Ms. Miller asked what type of materials would be used for the walkway and deck. Mr. Strait answered that he was not certain, but believed it would be either bluestone or concrete, and that the deck would be pressure treated wood. Mr. Hillman asked about drainage. Mr. Strait replied that they would tie into existing roof leaders and drainage, which drain to the lawn area, and that no drainage impacts are not anticipated.

Ms. Miller asked if there were any buffers to the wetlands. Ms. Cameron answered that the areas has large trees and Phragmites, but not many shrubs. Ms. Miller recommended that a planted wetland buffer be required as a condition of approval. Ms. Cameron recommended that the buffer be installed in the area between wetland flags #4 and #6 shown on the plan, and should include at least nine shrubs, such as Clethera, Winterberry and Highbush Blueberry.

Ms. Miller expressed concern regarding the use of pressure treated wood for the deck.

During its deliberation, the Commission recommended that (1) the deck to be located outside the regulated areas be constructed of cedar or other non-treated wood, or a wood-polymer composite, such as Ovec or Trex, and (2) the walkway, also located outside the regulated areas, be made of flagstone or brick set in stone dust, or other pervious materials.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve with conditions Wetlands Permit Application #EPC-100-2003. The application is approved subject to the condition that a planting buffer shall be installed in the area between Wetland Flags #4 and #6, which are shown on the approved plan. The buffer area should be unmowed and planted with no less than nine shrubs, such as Clethera, Winterberry, Highbush Blueberry, or Shadblow. These plantings should provide habitat value for wildlife. In

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addition, the buffer area should filter out most herbicides, insecticides, and fertilizers used on the lawn area from stormwater runoff before it enters the wetlands thereby protecting the wetlands from nutrient overload and changes in plant communities, and should support a greater variety of beneficial insects and microorganisms. The work was approved as shown on the plan entitled "Proposed Sanitary Sewer Connection; Dennis & Jean Gillespie, 6 Juniper Road, Darien, Connecticut" by Grumman Engineering LLC, dated 4-3-03, last revised 10-3-03. The motion was made by Mr. Hillman, seconded by Ms. Cameron, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-101-2003, Jonathan & Ann Carr, 35 Sunswyck Road, proposing addition/alterations of a single-family residence, wetland plantings and removal of invasive species, and perform related site development activities within a regulated area. The property is located on the south side of Sunswyck Road approximately 150 feet southeast of the intersection of Tory Hole Road and Sunswyck Road, shown on Tax Assessor's Map #62 as Lot #18.

Wetland Scientist William Kenny and Architect Chris Pagliarulo presented the application on behalf of Mr. and Mrs. Carr.

Mr. Hillman first asked the Commission members if the application was complete, and then if the project required a public hearing. Mr. Hutchison expressed concern that a hydrological study had not been provided. Ms. Cameron stated that she would like to see more information regarding impervious surface coverage on the site. After some discussion, the Commission determined it was able to continue its review under the General Meeting.

Mr. Kenny summarized the site conditions. The pond is a manmade pond with fringe wetlands. The previous owners were maintained a natural wetlands buffer. The wetlands is lower than the developed area, and is approximately 5 feet lower than the driveway, and is separated from the work by an existing retaining wall. The pond was described as eutrophic and stagnant. Wildlife species that were found are well adapted to living near human activity. The addition would be constructed over the existing terrace near the pool area. The edge of disturbance would be 25 feet from its closest point. Approximately 900 square feet of new impervious area is proposed. The work would require minor tree removal and the removal of some old Japanese yew. The planting plan is proposed to mitigate for this loss and new nesting boxes would replace lost cavity nesting. No direct wetland impact is proposed. Short term impact would be mitigated by the use of silt fencing. Mr. Kenny said that long term issues would concern drainage, which he would discuss with the Commission. He explained that the bedrock not good for infiltration and they cannot install an infiltrator.

Mr. Pagliarulo reported that the septic system is located to the west of the residence.

Mr. Kenny explained that it is policy that when close to the coastline, release the stormwater quickly before water from the upper watershed reaches the area. Ms. Cameron expressed concern regarding impervious coverage. Ms. Miller noted that the propose wall would be backfilled and relatively high above the adjacent grade. Mr. Pagliarulo explained that the existing ledge prevents the site from begin truly pervious. He said that, although there is pervious soil in the area, it sits on top of the ledge.

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Mr. Pagliarulo said that no blasting anticipated. Mr. Carr said that they could pin the foundation to the bedrock and the basement level of the house is at existing grade. He explained that they would stop excavating when they hit the bedrock.

Ms. Miller noted previous addition was added onto the house. Mr. Pagliarulo replied that the addition was constructed in the mid-1980s, and is a poorly constructed sunroom that would be reconstructed as part of the project.

Mr. Hillman inquired to the function of the proposed additions. Mr. Pagliarulo and Mr. Carr replied by explaining how the formal layout of the residence does not conform to today's casual lifestyles, and how the new additions would allow for easier entrance to the kitchen area from the driveway.

Mr. Pagliarulo reported that Vince Proto of the Health Department has reviewed the plans and is comfortable with the design and that they may not need a B100a Code Complying Area.

Ms. Cameron and Mr. Hutchison discussed potential impact from drainage to the existing retaining wall located between the driveway and wetlands. Ms. Cameron expressed concern that damage to the wall could in turn impact the wetlands.

Ms. Cameron and Ms. Miller recommended the removal of the Multiflora Rose. Mr. Kenny stated that the invasive plant could be removed by hand.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve with conditions Wetland Permit Application #EPC-101-2003. The application is approved subject to the following conditions:

1. That the Department of Public Works review and approve the proposed drainage plan. It is particularly noted by the EPC that the drainage should not pond near or otherwise impact the stonewall. Damage to the wall may cause it to fall into the regulated area and cause unanticipated impacts. Any changes recommended by the Town's engineer shall be reviewed by Commission Staff. Insignificant modifications may be administratively approved.
2. That the approved tree removal be done by hand. The wood material cannot be chipped or stored within the wetlands and 50' buffer area.
3. That the invasive Multiflora Rose and Japanese Bittersweet be removed. Similar to the tree removal, the work shall be conducted by hand and resulting waste materials shall not be deposited within the regulated areas.
4. That this approval include the repair/repointing of the existing stonewall.

The work was approved as shown on the plans entitled "Development Plan, Single Family Addition; Jonathan H. Carr & Anne C. Carr, 35 Sunswyck Road, Darien, Connecticut" by Rocco V. D'Andrea, Inc., dated 10-3-03. The motion was made by Ms. Cameron, seconded by Mr. Hutchison, and unanimously approved.

Chairman Hillman read the following agenda item:

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EPC-102-2003, Ann W. Gibb, 50 Hanson Road, proposing the repair/enlargement of a septic system and perform related site development activities within a regulated area. The property is located on the south side of Hanson Road approximately 1,000 feet east of the intersection of Hanson Road and Hollow Tree Ridge Road, shown on Tax Assessor's Map #9 as Lot #110.

Patrick Collins and Aleksandra Moch of Wet Soils, LLC, presented the application. Mr. Gibb was present to address questions from the Commission.

Mr. Collins explained that the application proposes the replacement of an existing, failing septic system. He said that the property contains two septic systems. The failing system is located west of the residence and runs parallel to the brook. The second system is located on the southeast corner of the residence. Since the house sits on a slab, they cannot connect to the second system. Mr. Collins said that he tested the soils in the front yard (northwest portion of the property) but found it unsuitable for use. Instead, the revised plan by Jim Procaccini was designed to meet Ms. Sarner's request to find a more suitable area further away from the brook. Mr. Collins explained that the Health Department requires that a five bedroom system be installed if the existing system is replaced. Mr. Hillman said he thought they could not connect the whole house to the system. Mr. Collins replied that they cannot connect the residence to the existing four-bedroom system, but Mr. Proto requires that the new system be able to accommodate the full residence.

Mr. Gibb reported that he had been working with Mr. Van der Keift regarding the possibility of installing a new sewer line on Hanson Road, but that the project has fallen by the way side.

Ms. Cameron recommended that sediment and erosion controls be installed around the catch basins near the construction accessway off of Hummingbird Lane during construction.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve with conditions Wetlands Permit Application #EPC-102-2003, as modified. The work is approved with the condition that appropriate sediment and erosion control measures be taken, including the use of controls around the catch basin on Hummingbird Lane near the construction accessway. The work shall conform to the plans by Jim Procaccini, A. Procaccini & Sons, received during the November 5, 2003 meeting, and overlaid on the October 16, 2003 survey by William W. Seymour & Associates. The approved septic system shall be located within the southeast corner of the property and no closer than 47 feet from the wetlands, which are located along the brook. The motion was made by Mr. Hillman, seconded by Mr. Hutchison, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-103-2003, Robert Hill & Paula Sabato Hill, 3 Robin Hood Lane, proposing the demolition and reconstruction of a single-family residence, and perform related site development activities within a regulated area. The property is located on the east side of Robin Hood Lane approximately 120 feet north of the intersection of Sedgwick Avenue and Robin Hood Lane, shown on Tax Assessor's Map #17 as Lot #81.

Robert Hill, property owner, presented the application to the Commission. Mr. Hill explained that the application proposes the demolition of the existing residence. He said that the new

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house would be 1 foot narrower, and that the existing concrete patio in the rear would be replaced with pervious material, such as pavers or flagstone set in stone dust.

Mr. Hutchison stated that he recalled from previous meetings that the Mr. Hill's property experiences drainage problems during significant rain event when the culvert on the property becomes clogged.

Ms. Cameron noted that plantings had been required as a condition of approval under Wetlands Permit Approval #EPC-60-2002 for a shed. Mr. Hill reported that he is in the process of installing the shed. Ms. Cameron asked when the work would be completed. Ms. Sarner reminded Mr. Hill that the permit would expire one year from the commencement of work activity. Mr. Hill said he began the work in July 2003.

Mr. Hill said that the new residence would have a basement. He said that they would line the walls and all the water would be connected to the catch basin with the approval of the Department of Public Works (DPW).

Mr. Hill expressed concern that his neighbor on the corner of Sedgwick Road and Robin Hood Lane constructed a larger house with a basement without EPC review, and that he believes that the work has caused water problems on his property.

Ms. Sarner asked Mr. Hill if the construction of the proposed basement would cause problems to his surrounding neighbors. Mr. Hutchison stated that a drainage study should be provided. Ms. Cameron recommended that Mr. Hill provide a letter of approval for the connection to the town stormwater system from the Town DPW.

Upon further discussion, the Commission Members requested additional information to support the applicant's claim of "no impact." Specifically, the following information and materials were requested to address EPC concerns:

1. Drainage report by a professional engineer regarding existing and proposed conditions and any potential impact to the wetlands and downstream neighbors. The report should discuss any increases in stormwater runoff that may result in constructing a basement on the property, which currently does not have a basement.
2. An updated survey or site plan showing the previously approved shed, wetland restoration plantings, and existing and proposed drainage appurtenances (i.e., leader and footing drains, adjacent catch basins...).
3. Copy of Mr. Hill's approval to connect to the Town's stormwater system.

Mr. Hillman said that the application could be continued to the December 3, 2003 meeting, or to the January 7, 2004 meeting if more time was needed.

Chairman Hillman read the following agenda item:

EPC-104-2003, Juan & Leslie Colon-Collazo, 11 Old Oak Road, proposing the replacement of an existing driveway with a circular driveway, new front walkway, regrading, and performance of related site development activities within a regulated area. The property is located on the northeast side of Old Oak Road approximately 300 feet north of the intersection of Leeuwarden Road and Old Oak Road, shown on Tax Assessor's Map #8 as Lot #5.

Peter Romano of Land-Tech Consultants presented the application, and Mr. Colon-Collazo present to address questions from the Commission.

Mr. Romano explained that the existing driveway has a 13% grade, and that 10% is considered a steep grade. Mr. Hutchison later noted that they would not be allowed to construct a driveway with this steep slope today. He said that the driveway redesign would create a 9% grade. He reviewed the existing and proposed site conditions, including the location of the wetlands. He said that the new impervious area not drain to wetlands but would be connected in a catch basin to be connected to infiltrator galleries. A planting buffer would be installed as mitigation, incorporating the use of shrubs and conservation seed mix with tall grasses.

Mr. Hutchison asked if the natural topography would be altered. Mr. Romano replied that the grade would remain similar to the existing grade. He noted that the proposed plan includes sediment and erosion controls and narrative with construction sequence.

Ms. Miller asked if they considered the use of pavers for part of the driveway. Mr. Romano replied that the top of the driveway is level and discharges into the catch basin and the lower area of the driveway does not drain toward the wetlands. Ms. Miller recommended the use of pavers with gravel. Mr. Romano said that the pavers could be used in the gutter area of the circular driveway. Mr. Colon said he hoped that the majority of the circular drive would be level as a bike riding/play area for his children.

Mr. Hutchison inquired to the advantage of having the proposed circular driveway. Mr. Romano replied that the circular drive is aesthetic and would provide a play area, and has been shifted away from the wetlands as much as possible.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve with conditions Wetland Permit Application #EPC-104-2003. The application is approved with the condition that the inside curb of the circular driveway shall be constructed of pervious block pavers, such as Turfstone™, and that the driveway area constructed of the pavers shall be no less than 200 square feet. The work activity shall conform with the plan entitled "Map of Proposed Driveway Entrance, Prepared for Juan & Leslie Colon-Collazo, 11 Old Oak Road, Darien, CT" by Evan Wayne Associates Inc., dated October 8, 2003, as modified by this decision. The motion was made by Mr. Hillman, seconded by Ms. Cameron and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-105-2003, Paul & Hazel Durham, 31 Prospect Road, proposing the correction of a violation of the Town's Inland Wetland and Watercourses Regulations, and perform related site development activities within a regulated area. The violation involves clearing of vegetation, replanting of a wetland area with ornamental plantings, deposition of mulch material within a regulated area, and installation of trenches/drainage. Discussion shall include a review of the unauthorized regulated activities and a proposed remediation/replanting plan. The property is located south side of Prospect Avenue approximately 300 feet west of the intersection of Prospect Avenue and Brookside Road, shown on Tax Assessor's Map #16 as Lot #70.

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Michael Fishman of Stearns & Wheler, LLC presented the application on behalf of the Durhams. Mr. Fishman reported that he had the prior existing conditions well documented on the site. Mr. Hillman said that he understood from reviewing the materials provided, the landscaper acted without permission from the Durhams.

Mr. Fishman said that, based upon his previous work on the site, the water is a new phenomenon. He said that the shallow trenches were installed to relieve some of the drainage problems, and has been removed as requested. He said that the fence is not new, but had been cleared of vines. He said that the pipe that Mr. Woodside expressed concern about within his letter was existing and that they found the grate, which had been covered by grass. He said that the existing garden area and the lawn have not changed.

Mr. Fishman reported that the Durhams worked with Don Ferlow, Landscape Architect and Wetland Scientist, of Stearns & Wheler, LLC, on the planting plan, and discussed different aspects of the plan.

Mr. Hutchison stated that he was offended that the landscaper was not present after not supervising the work conducted on the Durhams' property.

Upon further discussion of the materials and plans presented, the following motion was made: That the Commission approve with conditions the above referenced application. The application is approved with the condition that no additional mulch shall be placed within the regulated areas, and as it decomposes, the existing mulch should be replaced with pachysandra to ensure that the soil is stabilized. The work activity shall conform with the plan received October 23, 2003 and entitled "Restoration Plan; Wetland Restoration Proposal, Paul & Hazel Durham Yard, 31 Prospect Avenue, Darien, Conn.," Sheet 1, by Stearns & Wheler, LLC, dated Oct. 2003, revised 22 October 2003. The motion was made by Ms. Cameron, seconded by Mr. Hillman and unanimously approved.

Chairman Hillman read the following agenda item:

Continuation of Discussion of EPC-98-2001, Richard O'Hare, 45 Brookside Road, regarding a violation due to activity within a conservation easement area and failure to undertake required revegetation of conservation easement area. The property is located at the northeast corner of Prospect Avenue and Brookside Road, shown on Tax Assessor's Map #15 as Lot #17.

Attorney Christoffel Krediet and Clare O'Hare were present for the discussion.

Mr. Hillman requested a minute to read Ms. Sarner's October 31, 2003 letter to the O'Hares, which carbon copied Atty. Krediet. Mr. Hillman said that the Commission hopes to find accord with assessment and recommendation, and recommended that the Commission not approve the modified plan. Ms. Cameron agreed.

Atty. Krediet reviewed actions taken by his clients in effort to comply with the permit approval and Commission requests. He said that he would continue the discussion from October 1, 2003 meeting. He said his clients want to achieve the Commission's goal to have the Conservation



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Easement boundary marked, the area planted, and terminate the maintenance and alteration of the vegetation within the easement. Mr. Hillman stated that these activities could have been done a long time ago.

Ms. Cameron said that she thought the Commission requested the use of a split rail fence or large boulders with shrubs to demarcate the boundary, and had requested during the October 1, 2003 meeting that more plantings be incorporated into the plan to safeguard the area. Atty. Krediet replied that he felt that the easement had been interpreted differently over the years. Mr. Hutchison asked Atty. Krediet what the conservation easement is. Atty. Krediet replied that it was an interest in the land that confers certain rights. Mr. Hutchison said that the deed was filed and available in the land records, and that he did not see the vagueness described by Atty. Krediet.

Mrs. O'Hare said that she would take the responsibility for not taking the time to understand the process or to take the matter seriously, but that she now understands that this is an important issue. She said that she knew that the easement existed when she purchased the house and knew that the house construction was highly contested. She said that she feels that the biggest mistake was not taking the time to speak directly with the Commission. She said that her willingness to comply is reinforced by the time and embarrassment caused by the violation, and does not want to be perceived as someone that disregards the rules. She said she wants to follow the plan originally approved in 2001, including marking the easement boundary. She requested that she be given another year to show that they can maintain the wet meadow.

Mrs. O'Hare said that she cleared the area two years ago. Ms. Sarner said that she did not understand the time line as described by Mrs. O'Hare. Ms. Sarner reported that when she spoke with Mr. Keating, Wetlands Enforcement Officer, he had informed her that he was told that the required planting had not been completed because of a drought, but that the O'Hares had continued to cut vegetation and maintain the lawn in the easement. Ms. Sarner said that the Planning and Zoning Office perceives the violation to have continued for two years. Mr. Hillman said that he does not relish reprimanding property owners. He recommended that Mrs. O'Hare withdraw the proposed plan, because he believed, based on the discussion, it would be voted down. He asked Mrs. O'Hare to rethink the plan, and recommended that she use Ms. Sarner's October 31, 2003 letter as a template.

Atty. Krediet stated that he did not feel it is the appropriate time to enforce any issues regarding the Conservation Easement, but the Commission must limit its review and discussion to only the wetland enforcement issues. Ms. Sarner advised the Commission that they could stop their discussion until they consulted with Town Counsel regarding the handling of the outstanding violations.

Mr. Hutchison summarized that the owners may have wanted to work to improve the wetlands conditions but the work took a different direction when the plan was not followed.

Mr. Hillman recommended that Mrs. O'Hare work with Commission Staff regarding a modified plan. Ms. Sarner asked the Commission members to give more information about the type of plan they would like to see. Ms. Cameron recommended the use of more trees and shrubs, but reminded Mrs. O'Hare that it is neither the Commission nor Staff's job to design the project.

Mr. Hillman recommended that the O'Hares consider an alternate plan to the wet meadow. Mrs. O'Hare asked the Commission why they did not favor the wet meadow plan. Ms. Cameron replied by noting that the original plan was not followed, that the grasses did not survive and that shrubs along the river edge would be beneficial. Atty. Krediet stated that the remaining Fescue would eventually dominate the area. Ms. Cameron explained that the Commission has not discussed the removal of the Fescue, but the augmentation of what is existing with additional plantings, including shrubs. Mrs. O'Hare asked for another chance to try the originally approved wet meadow design, and said that she could incorporate plants such as Black-eyed Susans and seed grasses. She later added that she wanted the chance to prove that it would take and be beautiful.

Ms. Cameron expressed concern regarding the reoccurrence of invasive species on the property, citing her experience with the Land Trust's Mather Meadow property.

Ms. Cameron stated that she felt that the use of boulders to demarcate the easement boundary is important.

Mrs. O'Hare said that she has hired a new landscaping company, whom she feels she can trust. Mr. Hillman said that the Commission has great respect for the consulting firm the O'Hares have been working with, Stearns & Wheler, but recommended that they get a new perspective by hiring a new firm.

Ms. Cameron recommended that a timeline be established. Mr. Hillman recommended that the review be continued at the January meeting.

Atty. Krediet asked for a short break to allow for private discussion with his client. In the meantime, the Commission addressed other business.

Chairman Hillman opened the discussion of the following "Other Business" item:

Discussion of Bond Requirement for Lauer Property, 319 Middlesex Road (#EPC-40-2003):

The Commission reviewed with Mrs. Lauer her request of October 23, 2003 regarding the Commission's September 3, 2003 decision.

The Commission approved the reduction of the performance bond to the amount of \$750.

The Commission decided to withhold decision on the applicant's request for a permit extension, and recommended that she re-submit the request if she determine that an extension is needed. As she is aware, the permit expires one (1) year after the work is started. The Commission finds that this provides adequate time to complete the project. The appropriate time to file for a permit extension is if unforeseen events arise that delay the completion of the work activity. The permit approval is valid for five (5) years and expires on September 3, 2008.

The Commission reopened the Discussion of EPC-98-2001, Richard O'Hare, 45 Brookside Road, regarding a violation due to activity within a conservation easement area and failure to undertake required revegetation of conservation easement area.

Atty. Krediet asked to continue the discussion regarding the correction of the violation at the property at 45 Brookside Road, and wanted to confirm that the EPC is willing to review a modified plan from his client. Ms. Miller said that she sees the good of a meadow and a plan that would include a border of shrubs along the riverbanks. Mr. Hutchison added that the view of the meadow could be good, and suggested that Mrs. O'Hare consider screening the boulders with shrubs and grasses. Mrs. O'Hare said that she is ready to commit to see the plan through.

Atty. Krediet asked that his objection that the Commission would require a bond for a plan that they request to be noted. Chairman Hillman said that the Commission is acting within its right, and would feel comfortable if Atty. Krediet wished to pursue the matter through litigation. Mr. Hutchison explained that it is typical Commission practice to require bonds for sensitive property. Ms. Sarner reported that when she met with Atty. Krediet when he submitted the new materials, he has informed her that he said that a bond would be posted.

Atty. Krediet said he would see it as an "enforcement" bond as opposed to a "performance" bond, and asked that his objection be noted in the record.

Upon further discussion, the Commission made the following findings:

1. The Commission finds that the updated plan of October 30, 2003 by Stearns & Wheler, LLC did not satisfactorily address its concerns and denied the property owners' request for its approval. However, the Commission decided to continue its discussion to no later than its February 4, 2003 meeting. This continuation of the discussion should provide the owners with adequate time to work with an environmental consultant in developing a new proposal for the wetland remediation/correction of violation.
2. The plan for the easement/wetlands restoration must be revised and submitted to the Commission, along with supporting documentation.
  - a. The plan revision must include a planted riparian buffer, no less than 5' in width, along the northeastern riverbank. This buffer should include new plantings of shrubs and/or small trees and should replace the lawn area that extends to the river's edge. This planted buffer should provide habitat value, protect the area from changes in the plant community, stabilize the riverbank, and support a greater variety of beneficial insects and microorganisms.
  - b. The plan must also include the demarcation of the Conservation Easement Area boundary with boulders, as discussed during the November 5, 2003 meeting.
  - c. The Conservation Easement Area should be revegetated with native plantings to replace the existing lawn area and provide understory growth and/or groundcover that should serve to filter out most herbicides, insecticides, and fertilizers used on the lawn area from stormwater runoff before it enters the river and impacts the wetlands. Nutrients dissolved in the runoff would be used by the plants and microorganisms, or incorporated into the soils of the buffer, which would protect the wetlands and river from nutrient overload and changes in the plant community. The plants selected should also provide wildlife habitat value, require little or no maintenance, and be able to thrive in the wetlands/floodplain area.
  - d. The plan must include a planting list that outlines the type, size and number of plants proposed.
  - e. The plan must be accompanied by a comprehensive project narrative/wetlands

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report describing the type of activity associated with the restoration of the conservation easement and the maintenance of the plantings, including a review of the proposed plant community's ability to thrive in existing hydrologic and soils conditions, as well as scheduled mowing, site access, type of equipment to be used, and work sequence. The Commission Members note that they would remain open to the option of creating a wet meadow within the easement area, but in no manner state that they would ultimately approve such a plan. The members request that supporting information be provided showing that a wet meadow is a feasible alternative. Concerns raised during discussions included the finding that the attempt to create a meadow in the past failed because the grasses did not survive and the area was mowed more than twice a year and throughout the growing season. To date, sufficient evidence supporting the plan's feasibility has not been provided.

- f. The Commission has advises the property owners of its intention of requiring a performance bond to be posted with the Planning and Zoning Office to ensure that the violation is satisfactorily corrected. The Commission has ability to require such bonds, at its discretion, under the Town's Inland Wetlands and Watercourses Regulations. An estimate of plant and labor costs associated with the restoration/replanting plan shall be provided. This estimate shall be used to determine the amount of the performance bond, which shall be held for two to three growing seasons to ensure that new plantings are established and the site complies with Commission approval and all provisions of the Regulations.

The discussion of the violation at 45 Brookside Road was continued to the February 4, 2004 meeting.

Chairman Hillman read the following agenda item:

Discussion and Possible Decision of EPC-93-2003, Foster Kaali-Nagy, 59 Five Mile River Road, proposing the demolition of an existing house, construction of a single-family residence, new larger driveway, installation of a stone retaining wall, walkways, plantings, a.c. units and propane tank, fill and regrading activity, drainage improvements, and perform related site development activities within a regulated area.

TOWN OF DARIEN  
ENVIRONMENTAL PROTECTION COMMISSION

PERMIT TO CONDUCT A REGULATED ACTIVITY

EFFECTIVE DATE: NOVEMBER 5, 2003  
EXPIRATION DATE: NOVEMBER 5, 2008

Application Number: EPC-93-2003

Applicants' Name and Address: Foster Kaali-Nagy  
70 Pine Street  
New Canaan, CT 06840

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Property Address of Proposed Activity: 59 Five Mile River Road  
Darien, CT 06820

Name and Address of Applicants' Representative: Attorney Phil Toohey  
Lampert, Williams & Toohey, LLC  
46 Main Street  
New Canaan, CT 06840

Proposed Activity: Demolition of an existing house, construction of a single-family residence, new larger driveway, installation of a stone retaining wall, walkways, plantings, a.c. units and propane tank, fill and regrading activity, drainage improvements, and perform related site development activities within a regulated area.

Shown on Tax Assessor's Map #66 as Lots #10.

The Environmental Protection Commission has considered the application with due regard to the matters enumerated in Section 21a-41 of the Connecticut General Statutes as amended and in accordance with Section 10 of the Inland Wetlands and Watercourse Regulations of the Town of Darien, and has found that the proposed work is in conformance with the purposes and provisions of said sections.

This authorization refers to the application to conduct regulated activities adjacent to Five Mile River within the Town of Darien. The Commission has conducted its review and findings on the bases that:

- In issuing this permit, the Commission has relied on the applicant's assurances, and makes no warranties and assumes no liability as to the structural integrity of the design or any structures, nor to the engineering feasibility or efficacy of such design.
- In evaluating this application, the Environmental Protection Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, after interested parties have had an opportunity to be heard at a duly noticed Public Hearing this permit shall be modified, suspended or revoked by the Commission.

The Environmental Protection Commission met for a joint public hearing with the Zoning Board of Appeals on September 17, 2003 and October 1, 2003. During the two nights of public hearing, the applicant's representatives presented information explaining the project and provided answers to concerns and questions raised by the members of the Environmental Protection Commission and the Zoning Board of Appeals, and staff. No one from the general public participated in the Public Hearing, although invited to do so by the two boards. The public hearing was closed on October 1, 2003 and the two boards deliberated the application separately.

Following careful review of the submitted application materials and related analysis, the Commission, all of whose members that participated in the deliberation are fully familiar with the site and its surroundings, finds:

A. PROJECT DESCRIPTION:

The application proposes the demolition of an existing 1,350-square foot single-family residence and replacement of an existing driveway/turnoff area. The existing residence is in poor condition, and its unusual design would make it difficult to expand or otherwise renovate. The residence would be replaced by a new four-bedroom 1,395-square foot house with a lower level garage. The new driveway would be located along the western property boundary, and would be constructed of Turfstone™, or pervious paving blocks filled with gravel. Underground utilities would be installed to service the new house. The property would be filled and regraded. A stone retaining wall would be constructed in the rear yard to support a filled lawn area and bluestone patio. The roof leaders and driveway drains would be connected to subsurface detention structures constructed from 18"x48" precast concrete galleries and located adjacent to the new driveway. A planted buffer would be installed between the stonewall and river's edge to replace existing lawn grass. The existing impervious coverage is 2,540 square feet, and the proposed impervious coverage would equal 1,915 square feet, not including the driveway.

B. SITE DESCRIPTION:

The property is a ±0.18-acre parcel located on the north side of Five Mile River Road approximately 170 feet east of the intersection of Berry Lane and Five Mile River Road. It is shown on the Tax Assessor's Map #66 as Lot #10. It is located on the banks of the Five Mile River and falls completely within the regulated 100' setback for the river. The wetlands located at the shoreline are tidal, and therefore are not governed by the Town's wetland regulations.

C. HEARING PRESENTATIONS AND RECORD:

The applicant's representatives provided materials to the Environmental Protection Commission as part of the record in this matter. These materials were presented and discussed during the General Meeting of August 6, 2003 and joint Public Hearing with the Zoning Board of Appeals opened on September 17, 2003 and continued to October 1, 2003, and discussed during the Commission's deliberation on October 23, 2003:

1. Proposed Plans:

- a. "Site Development Plan, 59 Five Mile River Road, Darien, Connecticut – Plan Prepared for Foster Kaali-Nagy, New Canaan, Connecticut" by McChord Engineering Associates, Inc., dated August 11, 2003, last revised 9-24-03.
- b. "Site Development Plan, 59 Five Mile River Road, Darien, Connecticut – Plan Prepared for Foster Kaali-Nagy, New Canaan, Connecticut" by McChord Engineering Associates, Inc., dated August 11, 2003, last revised 8-15-03.

2. Architectural Plans:

- a. "Proposed Residence, 59 Five Mile River Road, Darien, CT" by Alex Kaali-Nagy, A.I.A., dated 08/08/03, last revised 09/24/03.

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- b. "Proposed Residence, 59 Five Mile River Road, Darien, CT" by Alex Kaali-Nagy, A.I.A., dated 08/08/03, last revised 08/20/03
3. Drainage Report – "Storm Drainage Summary – Location: 59 Five Mile River Road, Darien, Connecticut" by Steven A. McAllister, P.E., L.S., dated June 11, 2003, revised 8/6/03.
4. Soils Report – "Soil Survey/Wetland Delineation" for 59 Five Mile River Road by Mary Jaehnig, Certified Soil Scientist, dated May 7, 2003.
5. Narrative – "Project Narrative, For Site Improvements at 59 Five Mile River Road, Darien, Connecticut" by McChord Engineering Associates, Inc., dated August 15, 2003.
6. Letter to Attorney Phil Toohey of Lampert, Williams & Toohey from Nancy H. Sarner, EPC Staff, and Robert Woodside, ZBA Staff, Re: Wetlands Permit Application #EPC-93-2003 & Calendar Number #69-2003, 59 Five Mile River Road, dated August 28, 2003.
7. Letter to Captain Duane Lovello, Darien Police Department, from Robert Woodside, Code Compliance Office, Re: Zoning Board of Appeals Calendar No. 66-2003, Foster Kaali-Nagy, 59 Five Mile River Road, dated June 30, 2003.
8. Letter to Robert Steeger, Director of Public Works, from Robert Woodside, Code Compliance Office, Re: Zoning Board of Appeals Calendar No. 66-2003, Foster Kaali-Nagy, 59 Five Mile River Road, dated June 30, 2003.
9. Note from Bob Steeger, Director of Public Works, received by the Planning and Zoning Office on July 15, 2003.
10. Letter to Robert Woodside, Code Compliance Officer, from Philip J. Toohey, Re: 59 Five Mile River Road, dated July 16, 2003.
11. Memorandum to Robert Woodside, Code Compliance Officer, from Capt. Duane J. Lovello, Re: Foster Kaali-Nagy, 59 Five Mile River Road, dated July 31, 2003.
12. Letter to Darien Zoning Board of Appeals and Darien Environmental Protection Commission from Patricia Brown Zak, undated.
13. Letter to Darien Zoning Board of Appeals and Darien Environmental Protection Commission from Peter & Barbara Callaghan, undated.
14. Letter to Darien Zoning Board of Appeals and Darien Environmental Protection Commission from Samuel & Jane Marrone, undated.
15. Letter to Foster Kaali-Nagy from Edward L. Hogan, dated 9/17/2003.
16. Letter to Darien Environmental Protection Commission and Darien Zoning Board of Appeals from Sharon Workman, Re: Kaali-Nagy, 59 Five Mile River Road, Darien, dated September 17, 2003.

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17. Memorandum to Jeremy Ginsberg from John Gaucher [State DEP], Re: Kaali-Nagy cspr [Coastal Site Plan Review] – 59 Five Mile River Road, Received by the Planning and Zoning Office on September 18, 2003.
18. Letter to Attorney Phil Toohey from Nancy H. Sarner, GIS Specialist/Planner, Re: Wetlands Permit Application #EPC-93-2003, 59 Five Mile River Road, Request for Additional Information, dated September 19, 2003.
19. Assessor's Property Street Card for Tax Lot #10 on Map #66.
20. Assessor's Property Street Card for Tax Lot #10, Dev. Lot Number 'b' on Map #66.
21. Assessor's Property Street Card for Tax Lot #9 [26A] on Map #66 [18].
22. Residential Property Record Card for Map #66, Lot #10, No Deed Date, from 10/1/99 (Owner of Record: Robert V. and Lucille M. Harris).
23. Residential Property Record Card for Map #66, Lot #10, Deed Date 20030716 (Owner of Record: Foster R. Kaali-Nagy).
24. Residential Property Record Card for Map #66, Lot #9, Deed Date 20030716 (Owner: Foster R. Kaali-Nagy).
25. Page 491, Town of Darien Posted Rate Book, dated June 30, 1992.
26. Page 493, Town of Darien Posted Rate Book, dated June 30, 1991.
27. Warranty Deed (Long Form), Conveyance to Foster R. Kaali-Nagy from Robert V. Harris & Lucille M. Harris, [Darien Land Records Vol. 1124, Pages 452 to 454].
28. Printout of List #6557, For Year 1998, dated 9/16/03; Harris, Robert V. & Harris, Lucille M., 59 Five Mile River Road (Map 66, Lot 10).
29. Printout of List #6557, For Year 1999, dated 9/16/03; Harris, Robert V. & Harris, Lucille M., 59 Five Mile River Road (Map 66, Lot 10).
30. Printout of List #6557, For Year 2000, dated 9/16/03; Harris, Robert V. & Harris, Lucille M., 59 Five Mile River Road (Map 66, Lot 10).
31. Printout of List #6557, For Year 2001, dated 9/16/03; Harris, Robert V. & Harris, Lucille M., 59 Five Mile River Road (Map 66, Lot 10).
32. Print out of List #6557, For Year 2002, dated 9/16/03; Harris, Robert V. & N/O Kaali-Nagy, Foster R., 59 Five Mile River Road (Map 66, Lot 10).
33. Zoning Board of Appeals Resolution for Calendar No. 83-1999.
34. Zoning Board of Appeals Resolution for Calendar No. 43-2002.



35. Zoning Board of Appeals Resolution for Calendar No. 54-1998.
36. Memorandum to EPC Members from Nancy Sarner, Environmental/GIS Analyst, Re: #EPC-93-2003, 59 Five Mile River Road, dated September 19, 2003.
37. Site History for Five Mile River Road, dated 9/29/2003, from the Planning and Zoning Office, received into the record October 1, 2003.
38. Site History of EPC Permit Applications for Five Mile River Road, dated 9/29/2003, from the Planning and Zoning Office, received into the record October 1, 2003

D. ITEMS/ISSUES OF CONCERN TO THE COMMISSION:

1. Impact to the Five Mile River

The protected/regulated areas under review by Commission are the Five Mile River, a tributary of the Long Island Sound and a significant watercourse within the Town of Darien, and the associated 100' setback area. Under its permit review process, the Commission not only limits additional development impact to wetlands and waterways, but, whenever possible, seeks to improve existing conditions.

The Commission reviewed the proposed planting plan for the area immediately adjacent to the Five Mile River. The Commission finds that the plan would create a protective planting buffer along the river's edge, which is currently absent from the property. The Commission finds that the plantings would not only enhance the biodiversity of the property, but should also serve to filter out most herbicides, insecticides, and fertilizers used on the lawn area from stormwater runoff before it enters the wetlands, and should support a greater variety of beneficial insects and microorganisms. Nutrients dissolved in the runoff would be used by the plants and microorganisms, or incorporated into the soils of the buffer. In addition, the Commission finds that the planted buffer should reduce the likelihood that the riverbanks would be disturbed.

The Commission also accepts the testimony of Holt McChord, P.E., that the detention structures would serve to as groundwater recharge and water quality treatment.

2. Impact to Drainage

The Commission heard testimony from the applicant's engineers, Holt McChord, P.E., and Steven McAllister, P.E., of McChord Engineering Associates, and reviewed Mr. McAllister's Storm Drainage Summary, revised to August 6, 2003. Based on the drainage summary, proposed increase in peak stormwater runoff would be addressed by directing roof leaders and driveway drains to subsurface detention structures. By utilizing the detention structures, the peak rate of runoff to the wetlands would be designed to match existing levels.

In carrying out its duties, the Commission has taken into consideration the standards established under the regulations, and has considered the concerns expressed by its members.

The Commission accepts the opinions of McChord Engineering Associates that, with appropriate sediment and erosion controls during construction and the use of the proposed detention structures, drainage impacts the river would be negligible.

### 3. Sediment and Erosion

The Commission recognizes that work activity within and adjacent to the river could cause erosion and/or sedimentation, and has reviewed the applicant's proposed steps to prevent significant impact to the resources. The Commission has found that the proposal incorporates both short-term and long-term sediment and erosion controls into the development plan. Temporary controls would be utilized during construction and are proposed to be maintained during the stabilization period following work activity. Permanent controls include the installation of a planted buffer and stone retaining wall, and installation ground cover within disturbed areas.

### 4. Review of Feasible and Prudent Alternatives

In considering the project proposal, the Commission considered possible alternatives that may be available and made findings regarding each. These findings included the following:

- a. Preservation of existing mature trees: The applicant provided a plan revision that shifted the proposed residence to the east and thereby preserves three additional trees along the western property boundary.
- b. Reduction in impervious area: The applicant provided a plan revision incorporating the use of pervious paving block for the driveway in lieu of standard asphalt pavement or gravel with compacted base.
- c. Renovation of the existing residence: The applicant's agents presented that the residence was in poor condition and an unusual floor plan, and would be difficult to renovate. A site visit by EPC and ZBA members confirmed that the preservation of the existing structure may be impractical.
- d. Reconstruction of the residence using the existing footprint: The existing house footprint is 1,350 square feet. The proposed house footprint is 1,395 square feet and is in approximately the same location as the existing residence. The Commission found that the construction of the new footprint does not pose greater detrimental impact to the river than constructing over the existing footprint and posed acceptable disturbances and impact to the river.
- e. Use of the existing driveway: Under a previous application, which was withdrawn, the applicant considered the using and improving the existing driveway. However, the Police Department and Department of Public Works expressed concerns regarding safety issues associated with limited site lines. As a result, that plan was not feasible.

The applicant had provided a revised plan [revision date 9-24-03] to address concerns expressed by members of the Environmental Protection Commission and the Zoning Board

of Appeals during the September 17, 2003 joint public hearing. The revised plan was presented during the October 1, 2003, and was shown to (1) save additional existing mature trees, (2) reduce the area of impervious coverage, and (3) reduce the house volume (which is a ZBA concern). The Commission appreciates the plan revisions provided by the applicant in an attempt to reduce impact and disturbance to the river, and finds that the revised plan addresses its concerns regarding prudent and feasible site designs.

E. DECISION:

The Commission hereby approves the proposal with the following stipulations:

1. This is a conditional approval. Each and all of the conditions herein are an integral part of the Commission's decision.
2. Construction shall be in accordance with the plans submitted to and reviewed by the Commission, entitled "Site Development Plan, 59 Five Mile River Road, Darien, Connecticut – Plan Prepared for Foster Kaali-Nagy, New Canaan, Connecticut" by McChord Engineering Associates, Inc., dated August 11, 2003, last revised 9-24-03.
3. The work activity is limited to that which is approved. Prior to implementation, any possible revisions to the plans, including but not limited to extension of the approved drainage appurtenances or new landscaping activity, must be submitted to and reviewed by the Planning and Zoning Office to determine conformance to this approval, and may require an amendment approval by the Environmental Protection Commission. Any increase in the extent of regrading, development, disturbance or impacts within the wetlands or watercourse, or regulated area around the wetlands, or other significant amendments to the approved plan will require prior submission to and review by the entire Commission in accordance with Section 7.8 of the Inland Wetlands and Watercourses Regulations of the Town of Darien.
4. The buffer planting shown on the approved plan is an integral part of this permit approval and therefore shall be completed prior to the issuance of a Certificate of Occupancy. Plant substitutions shall be approved by Commission staff prior to planting. The planted river buffer shall remain natural after the planting is completed; therefore, the use of detritus mulch is allowed for only the first growing season.
5. That a performance bond shall be posted with the Planning and Zoning Office to ensure that the buffer planting plan is completed according to the approved 9-24-03 plan, and the compliance with this approval. The bond shall be based upon an estimate of plant and labor costs, including the removal of invasive species, to be submitted to the Commission by the permittee. Half of the amount shall be returned upon the completion of the planting activity. The remaining amount shall be held for three (3) growing seasons to ensure that the new plantings are established. Any diseased or dead plantings must be replaced. According to Section 11.10 of the Town's Inland Wetland and Watercourses Regulations, a Zoning Permit shall not be issued until the bond is provided.
6. All sediment and erosion controls shall be installed prior to the commencement of work

activity as shown on the approved plan. The bottom of the silt fence shall be buried a minimum of 6-inches into the soil and shall be backfilled with suitable material. All controls must be inspected daily by the permittee or their representative. Any sagging, undermining, or damage to the silt fence or construction barrier must be repaired immediately.

7. Sediment and erosion controls shown on the plans shall be maintained throughout the construction process and shall only be removed when the disturbed areas have been adequately re-stabilized with suitable vegetation.
8. This permit does not relieve the applicant of their responsibility to comply with all other applicable rules, regulations, and codes of other Town agencies or other regulating agencies. In particular it is noted that a coastal site plan review from the Planning and Zoning Commission, variances from the Zoning Board of Appeals, and Zoning and Building Permits are needed before this project can proceed. A copy of these other permits and approvals shall be submitted to the EPC to complete the file.
9. The permittee shall notify the Environmental Protection Commission prior to commencement of excavation or regrading work and after the sediment and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and as per plan. All sediment and erosion control measures should be maintained until all disturbed areas are stabilized and revegetated.
10. The permittee shall notify the Environmental Protection Commission immediately upon commencement of work and upon its completion.
11. No equipment or material, including without limitation, fill, construction materials, debris, or other items shall be deposited, placed or stored in any wetland or watercourse on or off site unless specifically authorized by this permit.
12. The duration of this permit shall be five (5) years and shall expire on the date specified above. All proposed activities must be completed and all conditions of this permit must be met within one year from the commencement of the proposed activity.

Review and Possible Adoption of 2004 Meeting Schedule for the Environmental Protection Commission.

The 2004 Meeting Schedule was unanimously adopted as drafted by Commission Staff.

Adjournment: Having no further business, the Commission adjourned its August 6, 2003 meeting at 12:00 a.m. on August 7, 2003.

Respectfully Submitted,

Nancy H. Sarner  
Environmental/GIS Analyst